

MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

July 9, 2003

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 4:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

None.

APPROVAL OF AGENDA

Mayor Delgado requested the following addition under Presentations:

e) 717th Medical Company.

Councilor Bushee moved approval of the Agenda, as amended. Councilor Coss seconded the motion, which passed 5-0 by voice vote, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Pfeffer voting for, and none against. [Not present for this action: Councilor Lopez, Councilor Ortiz and Councilor Wurzbarger.]

APPROVAL OF CONSENT CALENDAR

Upon motion by Councilor Bushee, seconded by Councilor Chavez, the Consent Calendar, as amended, was approved by Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Pfeffer, Councilor Wurzburger.

Against: None.

Not present during this action: Councilor Lopez; Councilor Ortiz.

- a) [Removed by Councilor Bushee for discussion.]
- b) Bid No. 03/54/B — Traffic Signal at Jaguar Drive and Paseo del Sol and School Project; McDade Woodcock, Inc.
 - 1. Request for Approval of Budget Transfer — Signalization Impact Fee Fund.
- c) Request for Approval of Grant Contracts — State Agency on Aging.
 - 1. Foster Grandparent Program (FGP)
 - 2. Retired and Senior Volunteer Program (RSVP)
 - 3. Senior Companion Program (SCP)
- d) Request for Approval of Grant Agreement — Juvenile Accountability Services; New Mexico Children, Youth and Families Department.
 - 1. Request for Approval of Budget Increase — Grant Fund.
- e) Request for Approval of Lease Agreement — Parking Lot for Public Parking; Roman Catholic Church Archdiocese of Santa Fe.
- f) [Removed by Councilor Chavez for discussion.]
- g) Request for Approval of Memorandum of Agreement — Police Overtime for Security Services; Santa Fe Civic Housing Authority, Inc.
 - 1. Request for Approval of Budget Increase — General Fund.
- h) Request for Approval of Amendment No. 1 to Project Agreement — Operation DWI; New Mexico State Highway & Transportation Department.
 - 1. Request for Approval of Budget Increase — General Fund.

- i) Request for Approval of Amendment No. 1 to Professional Services Agreement — Website Development and Design Services for CVB; Maverick Advertising & Public Relations, Inc.
- j) Request for Approval of Amendment No. 1 to Professional Services Agreement — Public Relations Services for CVB; Locas, Inc., dba Steve Lewis.
- k) Request for Approval of Procurement Under Cooperative Agreement City of Albuquerque — Three (3) Refuse Collection Vehicles and One (1) Automated Side Load Vehicle for Solid Waste; Truck West.
- l) Request for Approval of Professional Services Agreement — Security Services for GCCC (RFP No. 2003/26/P); Akal.
- m) Request for Approval of Sole Source Procurement and Professional Services Agreement — Cost-of-service Study & Rate Restructuring Project; Integrated Utilities Group, Inc.
 - 1. Request for Approval of Budget Increase — Water Enterprise Fund.
- n) CONSIDERATION OF RESOLUTION NO. 2003-55.
(Councilor Lopez, Mayor Delgado, Councilor Bushee, Councilor Wurzbarger, Councilor Heldmeyer and Councilor Lopez.)

A Resolution Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority.
 - 1. Request for Approval of Budget Adjustments — General Fund/ State Fire Fund.
- o) Request for Approval of Proposed Revisions to City of Santa Fe Purchasing Manual — Section 15.4 Resident and Local Preference.
- p) [Removed by Councilor Bushee and Councilor Chavez for discussion.]
- q) [Removed by Councilor Chavez for discussion.]

APPROVAL OF MINUTES: June 25, 2003

Upon motion by Councilor Bushee, seconded by Councilor Coss, the Minutes of the June 25 meeting were approved, as submitted, with Councilor Bushee, Councilor Chavez, Councilor Coss, Councilor Heldmeyer, Councilor Pfeffer and Councilor Wurzbürger voting for, and none against. [Not present for this action: Councilor Lopez, Councilor Ortiz.]

PRESENTATIONS

Proclamation — “National Aquatic Week — July 13-19, 2003.”

Bella Garcia and Peggy Sanchez, natatorium managers at the City’s pools, were present for this proclamation, which Mayor Delgado read, declaring July 13-19 as National Aquatic Week.

2003/2004 City Poster and Proclamation to Jakki Kouffman. (Sabrina Pratt)

Ms. Pratt unveiled this fiscal year’s winning poster, “Hot Shadow, Melting Snow,” done in acrylic on paper by artist Jakki Kouffman. She said there were 48 entries this year.

Mayor Delgado read a proclamation recognizing Ms. Kouffman.

Ms. Kouffman stated that the original painting is on view at Gallery Horizon, 205 Canyon Road. She invited the public to an opening of an exhibition of her work on Friday, August 22, from 5:00 to 7:00 p.m.

Muchas Gracias — Mr. Dick Roth, President of Impact DWI. (Chief Beverly Lennen)

Mayor Delgado presented a Muchas Gracias Certificate to Mr. Roth, “who himself participates in DWI checkpoints and provides support to the Santa Fe Police Department officers, who diligently work to ensure the safety of our citizens.”

Mr. Roth, a citizen lobbyist on DWI issues for the past few years, urged everyone to support legislators, police officers and judges “who are working very

hard to deal with the problem of DWI in our community. I'm firmly convinced that we could reduce it ten percent per year for the next five years if we enforce the laws that we've passed in the last two years."

Sister City Santa Fe de la Vega, Spain. (Judge Barbara J. Vigil)

Judge Vigil, on behalf of the Santa Fe de la Vega Sister City Organization, presented medallions to four "very, very special people in our community who have, throughout the years, continued to work on the Sister City relationship with our Sister City in Santa Fe de la Vega, Spain."

Medallions were presented to the family of the late Pedro Rivera Ortega; Michael Branch; Albert Gallegos; and Mayor Delgado.

717th Medical Company.

Mayor Delgado introduced Col. Paul Peña, chief of staff; Maj. Michael Montoya, Army Aviation Support; and Warrant Officer Gary Yeager, Aviation Safety Officer.

Councilor Lopez stated that she, Councilor Pfeffer and Councilor Coss attended the Yellow Ribbon Ceremony, commemorating the deployment of the National Guard 717 Medical Company to Afghanistan.

Major Montoya stated that six aircraft and 42 soldiers will be deployed to Afghanistan — four aircraft and 29 soldiers from Santa Fe, and two aircraft and 13 soldiers from Oklahoma — and will report to Ft. Bliss tomorrow and be in Afghanistan by the end of July.

CONSENT CALENDAR DISCUSSION

a) Bid No. 03/49/B — Governor Miles Road Extension Project; A.S. Horner, Inc.

1) Request for Approval of Budget Transfers — Various Funds.

Councilor Bushee thanked the members of the RPA for their cooperative efforts in funding this project by allowing the use of the shared 1/4% tax, since it means the City will not have to use its CIP Reallocation Fund.

Councilor Bushee moved for approval. Councilor Lopez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee.

Against: None.

f) Request for Concept Approval to Lease Airport Land — Air Medical Response and Fixed Base Operating Business; Air Life Flight.

Councilor Chavez said he pulled this from the Consent Calendar because he abstained from voting at the Public Works Committee meeting.

Councilor Chavez commented that, while this is only conceptual approval, this will result in a 30-year lease with renewal options. He noted that, while residents around the hospital have come forward and stated their issues, residents living near the airport in District 3 as well as those in the county have not, but will be given an opportunity at a community meeting on July 15 at 6:30 at Cesar Chavez Elementary School.

Councilor Chavez stated that he would abstain from voting on this matter until he could hear the views presented at the community meeting.

Councilor Bushee stated that she thought it important to move the conceptual approval forward “to let the public know where we’re trying to go, and that the effort is to try to move the base of operations out to the Airport, where it’s more appropriate.” She said she hoped Mr. Montman could work with the business on the routes out there so noise could be kept to a minimum in neighborhoods.

Councilor Bushee moved conceptual approval. Councilor Heldmeyer seconded the motion.

Councilor Coss said he would abstain from voting tonight pending input at the community meeting next week.

Councilor Lopez reminded people that this is a health and safety issue for all of Northern New Mexico, not just Santa Fe, because St. Vincent Hospital is the designated trauma center and receives monies for being able to transport trauma patients to and from its facility. She said she has received numerous phone calls from people who have pointed to the critical need for these services.

Councilor Wurzbarger asked Mr. Montman what has happened since the meeting held in District 2, where staff was asked to explore the temporary move.

Mr. Montman responded that staff had been prepared to move ahead with the temporary arrangement, but then realized that “if we did a short term lease, we would still run up against the same requirements in state law dealing with the ordinance. So it seemed to me to be easier just to do the long term — do it one time and be done with it.”

Responding to questioning from Councilor Pfeffer on whether the hospital will be relocating the helipad away from the residential area, Mr. Montman said discussions are ongoing about acoustical walls, building the helipad on top of the hospital, and other initiatives to reduce noise. He stated that, by moving operations to the airport, noise around the hospital neighborhood will be reduced by at least 50%, because all refueling flights would be eliminated. He said noise at the airport will not be affected at all, because the refueling flights would be eliminated and replaced, one for one, with deployment and recovery flights.

Councilor Heldmeyer stressed that the City needs to do what it can to think creatively in considering how to reduce noise as much as possible to both neighborhoods — the one around the airport, and around the hospital.

Councilor Bushee said she would like to review all of the leases the City has at the airport, because there has been past controversy about the length of leases there. She recalled how the City “got into trouble” with long-term leases because it failed to raise rates on certain leases and “we had to review it, and I think we limited ourselves.”

Addressing the City Attorney, Councilor Bushee stated that she would like to find out if the City could impose conditions in the lease with respect to noise abatement and flight patterns.

Mr. Montman clarified that the lease drafted by the City Attorney’s Office has terms addressing participation in the voluntary noise abatement program at the airport, and developing noise routes with the FAA control tower. He said the business is already participating in these two provisions.

Councilor Bushee told Mr. Montman, “I think you scare people when you say a 30 year lease, because it seems like we’ll have no real say once we’ve signed onto this. I would like to just look at whatever legal mechanisms we have to provide some flexibility in there....”

The motion passed on the following Roll Call vote:

**For: Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer;
Councilor Wurzbarger; Councilor Bushee.**

Against: None.

Abstaining: Councilor Coss; Councilor Ortiz; Councilor Chavez.

**p) Request to Publish Notice of Public Hearing for August 13,
2003, City Council Meeting:**

- 1) CONSIDERATION OF RESOLUTION NO. 2003-____.
(Councilor Bushee and Councilor Chavez)
A Resolution Adopting the Development Impact Fees
Capital Improvements Plan for the Purpose of
Imposing Impact Fees According to the New Mexico
Development Fees Act.**
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**q) Request to Publish Notice of Public Hearing for Monday,
August 25, 2003, City Council Meeting:**

**BILL NO. 2003-25: On Ordinance Repealing Section 14-9.3
(C) SFCC 1987 and Creating a New Section 14-8.14 Regarding
Impact Fees, and Amending Section 14-12 SFCC 1987
Regarding Definitions.**

Councilor Chavez stated that there is another proposal to consider the resolution at the August 25 Council meeting instead of on August 13.

Councilor Chavez moved to publish notice of public hearing on August 13 instead of August 25. Councilor Coss seconded the motion.

In discussion, Interim Planning director Reed Liming clarified that the Finance Committee, at its last meeting, approved a motion to hear the resolution on August 13, and to consider the impact fees ordinance at its August 25 meeting.

Councilor Lopez moved an amendment to Councilor Chavez's motion to approve the Finance Committee schedule, which would have the CIP plan heard on the 13th and the impact fees bill on the 25th.

The amendment was accepted as friendly.

The motion, as amended, passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: None.

Mayor Delgado stated that action was not needed on item q because it had been addressed through the action just taken.

p) Request to Publish Notice of Public Hearing for August 13, 2003, City Council Meeting:

2) BILL NO. 2003-29: An Ordinance Creating New Sections 14-8.4(B)(6) and 25-2.9 SFCC 1987 Prohibiting New Private Sports Fields and Golf Courses with Natural Turf.

Councilor Bushee said she wanted to clarify something that was incorrectly stated in a newspaper report: "Currently this resolution already exempts City-owned sports fields and golf courses and all schools, from preschools, elementary, junior high, high school, college, or university. It does not specify a distinction between private and public. So there are no attempts to make amendments to this resolution."

Councilor Bushee moved approval to publish notice on August 13. Councilor Heldmeyer seconded the motion, which passed on the following Roll Call vote:

For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: Councilor Lopez.

[Conclusion of Consent Calendar discussion.]

**Request for Reconsideration of Approval of Bid No. 03/61/B —
Rain Barrels for Water Division; Home & Garden Innovations.**

**a) Request for Approval of Purchase Agreement: Home &
Garden Innovations.**

Councilor Pfeffer moved to reject approval of the purchase agreement, and to reject all bids and not to re-bid this item. Councilor Wurzburger seconded the motion.

Councilor Pfeffer said this will clear the way for an ordinance that he and Councilor Coss are sponsoring for allocating the budget originally set aside for this bid to go to a voucher program instead.

Councilor Heldmeyer pointed out that her main concern is to get rain barrels into people's hands before the monsoons arrive, and would vote against this motion "in the spirit of trying to do things in a timely way."

The motion passed on the following Roll Call vote, after Mayor Delgado broke a tie:

**For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger;
Councilor Coss; Mayor Delgado.**

**Against: Councilor Bushee; Councilor Chavez; Councilor Heldmeyer;
Councilor Lopez.**

**b) Request for Approval of Budget Adjustment — Water
Enterprise Fund.**

Councilor Pfeffer moved to not approve any budget adjustment on this item. Councilor Wurzburger seconded the motion.

Councilor Lopez said she would vote for this motion but had voted against the last motion because the City has a very good process that could have handled the protest, "and by bringing it straight to the Council, we didn't follow our own procurement rules."

Responding to questioning from Councilor Bushee, City Attorney Bruce Thompson stated that the protest that this constituted an Anti-donation Clause violation "makes no legal sense, and that would be my position."

Mayor Delgado asked Water Wise Program director Maya Martinez how she and her staff would fare with the City program, and Ms. Martinez responded that staff is working with Councilor Pfeffer, Councilor Coss and the Water Conservation Task Force to establish the program and its guidelines. She said existing staff will be able to absorb the program into their current duties, although there will be a learning curve involved.

Mayor Delgado commented that it is already July, and it will be August by the time the program is underway, “so I think there has to be consideration — are these barrels going to be ready for this season, or are we going to have to delay until next spring or so.”

Addressing the delay, Councilor Pfeffer pointed out that he and Councilor Coss initially asked the Council to delay its decision to buy the rain barrels from Home & Garden Innovations in Vermont for one month, but were unsuccessful, and protests were filed immediately after the vote. He said that automatically delayed the issuance of a purchase order by at least 15 days; and at that point, he and Councilor Coss were told they would have to propose an ordinance as opposed to a resolution, which required publication and a 15-day delay.

The motion passed on the following Roll Call vote:

**For: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee;
Councilor Coss; Councilor Lopez; Councilor Ortiz.**

Against: Councilor Chavez.

Abstaining: Councilor Heldmeyer.

**CONSIDERATION OF RESOLUTION NO. 2003-56.
(Councilor Coss, Councilor Chavez and Councilor Bushee)
A Resolution to Celebrate and Remember the Community
Activism of Charlie “The Greek” Griego.**

The Mayor and Councilors spent a few minutes reminiscing about Mr. Griego, who passed away a few weeks ago, and who appeared many dozens of times under Petitions From the Floor:

Mayor Delgado: “I think the relationship that Charlie and I had over the years was great. There were happy times, there were sad times, and Charlie and I had some great visits in my office.”

Councilor Coss: “Charlie was a neighbor of mine, and I ran against him for office twice, and when you saw Charlie at the bus stop, you knew you were going

to hear an earful about what was going on in the community, and he was usually right. I think it's important that we remember that kind of activism."

Councilor Chavez: "There are many activists in the community that have sacrificed and made contributions, but not many made the special effort to come down every other week. Charlie criticized us, but he reminded me what it was we were here to do, because sometimes we can forget that piece of it. Even if Charlie was critical towards me as a Councilor, or towards the group, he did it with respect, with humility.

"There were times when Charlie would need a ride home, and sometimes he was afraid to ask, because he was also a proud person. And I would say, 'Charlie, let's go, I'll give you a ride home.' I remember those times, and I certainly will miss them."

Councilor Bushee: "I think we might have to bronze his baseball cap and put it somewhere in City Hall, because it's landed in the center of this room countless times, when he's thrown his hat in the ring.... He always brings a smile to my face, even when sometimes he would get in my face. The week before he passed, I saw him at the bus stop over here on Sheridan, and he told me about trash, and he told me about City employees that needed to be watched and followed up by him.... I think he held a special place in all of our hearts, but I think he held a special role in this community. He was the voice of the people. And he cared about everything that went on in this city, and especially the kids."

Councilor Pfeffer: "Charlie was like the point man for the public. A lot of people who wanted to say something got their courage from Charlie... and I think we owe him a debt of gratitude for that."

Councilor Heldmeyer: "My memories of Charlie are of the electoral process. He put his money where his mouth was, and he did run, and he was always very respectful of the electoral process. When he was a candidate and took part in the candidate programs, he always showed up in his best bib and tucker, and listened carefully to the questions and answered them with his point of view. I think we all know up here that it takes a lot of courage to throw your hat into the ring, and he did it and followed through."

Councilor Ortiz: "I could think of no better tribute to Charlie than to have a bronze up there where the speaker's podium is, with his signature line telling us to wake up and smell the coffee.

"I was one of the kids that Charlie coached when I was a Little Leaguer, and he umpired a lot of my games. He was fair and stern back then in the late 70's as he was now, and he was committed to the National League, and he's going to be missed by a lot of people."

Jimmy Griego, Charlie's younger brother, thanked the Governing Body for this resolution. He said sometimes Charlie would become angry and frustrated because he had trouble expressing himself and getting his point across, "but Charlie really cared about all of you. And I'll tell you what: he's up there in heaven looking down at you guys."

Councilor Coss moved for approval, with the following amendment:

Page 2, line 7:

...encouragement to all community activists; and/or....

Councilor Bushee seconded the motion, which passed on the following Roll Call vote:

The motion passed on the following Roll Call vote:

For: Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer.

Against: None.

CONSIDERATION OF RESOLUTION NO. 2003-57.

(Mayor Delgado and Councilor Coss)

A Resolution Supporting the 2003 New Mexico Legislature House Joint Memorial 81 in Requesting That the State Highway and Transportation Department Offices in Santa Fe be Named the "Joe M. Anaya Memorial Complex."

Mayor Delgado stated he knew Joe Anaya "way back in my old Highway Department days, and this was a guy from Stanley, New Mexico.... and Joe worked at the Highway Department, and worked his way up and he ended up chairing the Highway Commission." He said this resolution asks the State Legislature, at its next session, to approve this joint memorial.

Councilor Lopez commented, "Not only was Joe an extraordinary man, but his kids are following his example."

[Later in the meeting, under Petitions From the Floor, son Mike Anaya, a Santa Fe County Commissioner, appeared before the Council with his nephew Brian Moya and thanked the Council for this resolution.]

Councilor Lopez moved for approval. Councilor Coss seconded the motion, which passed on the following Roll Call vote:

The motion passed on the following Roll Call vote:

For: Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.

Against: None.

Request From KBAC, 104.1 to Sell Beer at the Marty Sanchez Municipal Recreation Complex for the KBAC Summer Blast Music Festival, August 2, 2003, from 11:30 a.m. to 7:30 p.m. (Joann Orner, KBAC 104.1)

Ms. Orner reviewed the details of this special event with respect to security arrangements and other details. *[See City memorandum with attached information sheet and MRC Soccer Valley event plot.]*

Ms. Orner said the beer garden size will be 200 feet by 100 feet and will be manned by Prestige Security. She said 2,500 to 5,000 people are expected to attend, and Mike's Valet will handle parking.

Councilor Ortiz asked MRC administrative manager Larry Lujan if issues with AYSO have been worked out in terms of kids' soccer games that are held in the morning, and Mr. Lujan responded that adult and AYSO soccer games will take place in the rugby fields and multipurpose complex.

Councilor Bushee moved for approval. Councilor Pfeffer seconded the motion.

Councilor Wurzburger asked how the fields, which are a resource for the community, will be protected from wear and tear created by potentially 5,000 people, particularly if it rains.

Ms. Orner said the impact will be about the same as a sporting event. She stated that people will bring blankets and sit on chairs as opposed to "running around the fields," and vehicles will not be driven on the grass. She stated that no stakes will be driven in.

Councilor Coss commented that he shared Councilor Wurzburger's concerns about the grass, but would leave it to the experts with the hope that they would be able to protect it.

Councilor Coss said he was concerned about selling beer to 5,000 people on city property: "The last time I was at a concert out that way, it was for Santana many years ago, and I remember there were about five accidents when everybody tried to leave the concert at once. It was a nightmare." He cited regular concerns expressed by the Regional Planning Authority about the dangerous conditions of Caja del Rio Road as well as the dangers of County Road 62 at the bypass, "and that's where 5,000 people will come out of that concert."

Mayor Delgado asked if the Santa Fe County Sheriff's Department will be assisting with traffic control, since he thought their participation important.

Parks & Recreation Department marketing manager Gerard Martinez stated that Michael's Valet will coordinating hiring the County to help with traffic movement. He stated that State Police representatives will attend a follow up meeting on traffic issues, which will also include the City Police, County Sheriff and Michael's Valet.

Chief Lennen stated that City Police will assist people in leaving the facility and she will ask the County and State Police to further assist with the roadways outside of City jurisdiction. She said she felt the County would be willing to assist, based on memoranda of understanding that the City has, but she would agree with the Council that it is very important to have County participation.

Councilor Heldmeyer said it would be helpful for staff to prepare a report afterwards on how the grass has held up, how the traffic was handled and what the City's expenses were.

The motion passed on the following Roll Call vote:

For: Councilor Chavez; Councilor Heldmeyer; Councilor Lopez; Councilor Pfeffer; Councilor Bushee.

Against: Councilor Coss; Councilor Ortiz; Councilor Wurzburger.

Councilor Ortiz cautioned staff that there could be a traffic nightmare with soccer players leaving the fields as people arrive for this special event.

Councilor Wurzburger said she did not take the issue of protecting the soccer fields lightly: "We have fought for a place for the children to play soccer in this community for years and years and years, and the main resource for soccer is the MRC. The timing of this is at the very beginning of the soccer season." She questioned what kind of a contingency plan is available if there is rain and if the fields are torn up, i.e., how long will it take to get it all back together.

MATTERS FROM THE CITY MANAGER

None.

MATTERS FROM THE CITY ATTORNEY

None.

MATTERS FROM THE CITY CLERK

None from Deputy City Clerk Armida Villa.

RECESS: 5:45 p.m.

[Communications From the Governing Body was postponed to the conclusion of the Evening Session.]

EVENING SESSION

The Evening Session of the City Council Meeting was called to order at approximately 7:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Patti J. Bushee
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

None.

PETITIONS FROM THE FLOOR

Stefanie Beninato

Ms. Beninato said she spoke under Petitions two weeks ago, at which time the City Attorney, and the attorney hired by the City in a federal case with her, were directed to sit down and negotiate with her within three weeks' time. She said she has received a letter "that has basically tried to delay this process," and asked that the City Attorney and other attorney be directed to sit down with her on July 15 to negotiate, which would be three weeks from the last Council meeting.

Ms. Beninato said she wrote a letter to CVB director Darlene Griego on April 28, asking her what the policy was for putting out brochures at the City visitor center, and for working with tour companies. She said, "She goes around saying she's working with three tour companies, and I'd like to know that criteria, but I have not gotten a response from Ms. Griego." She asked that Ms. Griego be directed to respond to her letter "within a week."

Ms. Beninato stated that she wrote to Bill Rougemont "about some very serious safety violations and possible fraud" at the "City pool." She said she faxed Mr. Rougemont some suggestions on June 22 but hasn't heard back. She stated, "I would like Mr. Rougemont to respond to that within, say, a week or ten days."

Responding, City Attorney Bruce Thompson stated, “At the last meeting, the Mayor asked if I could meet with Ms. Beninato. That next morning, I contacted outside counsel and directed him to work on setting up the mediation. The one concern I had, which was what I directed him, was I would not meet with Ms. Beninato until her attorney in state court action had withdrawn or given me permission to meet. It’s still a condition before I can meet with her. It has not been met, and as soon as that condition is met, I’ll be more than happy to meet with her.”

County Commissioner Mike Anaya

Commissioner Anaya apologized for not being present during the Afternoon Session when a resolution was passed regarding his father, and thanked the Governing Body for adopting it and for their kind words. He introduced his nephew, Brian Moya, a City firefighter.

Carolyn Sigstedt

Ms. Sigstedt said she watched the County Commission meeting last night on television, when a very large development north of Santa Fe in the EZ, comprising 51 units, was approved. She congratulated the City and County for the new EZ requirement that developments of a certain size be able to provide water rights. She said the County also realized at last night’s meeting that there needs to be complementary legislation that defines water harvesting. She stressed that there needs to be a real definition in the EZ and County for water harvesting, as well as for wastewater treatment.

David McQuarie

Mr. McQuarie, 2997 Calle Cerrada, asked the Council’s assistance in requiring decent access for mobility impaired pedestrians in the downtown area. He said he was specifically speaking to the area bordered by Paseo de Peralta on the north and east; Alameda on the south, and Sandoval and Grant on the west. He stated that there are currently 24 key intersections in this area, and more than 80% of them have either substandard access or no access at all for the mobility impaired, which may be a form of discrimination.

Mr. McQuarie stated that he was at Cathedral Park last week, where he and some visiting relatives looked at the statue and then decided to go to La Casa Sena for lunch. He said the only way he could get across Palace Avenue was to go up to the curb cuts at Paseo, a six block trip — had he been able to walk, he could have crossed the street at the park.

Mr. McQuarie stated that he went to an H-Board meeting last night, where they passed a motion endorsing curb cuts with the sole requirement that they be aesthetically sensitive.

Fred Flatt

Mr. Flatt, 950 Vuelta del Sur, Las Acequias, distributed copies of an ENN meeting announcement regarding a request to amend the General Plan to annex a small piece of property on the southwest side into the city. He said the property is in the vicinity of the San Rafael Apartments and is for affordable housing.

Mr. Flatt stated that he would like to see some kind of orderly annexation instead of the “checkerboard” that has resulted from piecemeal annexations. He asked the Council to consider moving forward a plan for annexation in the area.

Doug Doran

Mr. Doran appeared on behalf of the public campaign to stop the design of nuclear weapons at Sandia Labs and to uphold Article 6 of the nonproliferation treaty. He stated that the crime of aggression, also known as the crime against peace, formed the first charge against the Nazis in the 1945 Charter of the International Military Tribunal at Nuremberg. He said this crime is defined as “planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or a conspiracy to do so.” He said this information is available at the library.

Mr. Doran said he wrote to Councilor Wurzbarger on May 17 asking the Council to entertain a resolution against the design of nuclear weapons. He asked for a response from Councilors as soon as possible.

APPOINTMENTS

None.

PUBLIC HEARINGS

Case No. AB 2002-03. 127 Duran Street Appeal. Martha Baca and Paul Pacheco Appeal the Decision of the Board of Adjustment's November 20, 2002 Denial of an Appeal of an Administrative Official's Determination Pertaining to Applicable Building Setbacks and the Issuance of Permit No. 02-2080 Re: Board of Adjustment Case No. AB 2002-02. The Property is Located at 127 Duran Street and is Zoned RM-2 (Multi-family Residential, 29 Dwelling Units Per Acre). (Postponed at June 25, 2003, City Council Meeting.) PUBLIC HEARING CLOSED.

City Planner Greg Smith reported as follows: "As Council will recall, the staff approved a building permit based on one interpretation of the setback requirements on this property. That determination was appealed to the Board of Adjustment, which upheld the staff. That Board decision was appealed to the Council, which considered the matter at an extensive public hearing, and the Council suggested that the property owners on either side of the property line go into mediation, which was sponsored by the City and has been successfully completed.

"Our recommendation to the Council tonight is to uphold the appeal, determine that the attached diagram, which is Exhibit A in your packet, represents the appropriate interpretation of setback requirements for 127 Duran Street pursuant to the provisions of Sections 14-7.1 and 14-12, pertaining to special yards for irregular lots.

"Staff would draw the Council's attention to the fact that Exhibit A has been signed by all of the parties who were involved in the appeal. Staff believes that the Council determination that this diagram is the appropriate interpretation of code setbacks is the proper resolution on this case."

Councilor Wurzbarger moved to uphold the appeal and approve Exhibit A. Councilor Lopez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez.

Against: None.

**CONSIDERATION OF BILL NO. 2003-15: ADOPTION OF ORDINANCE
NO. 2003-25. (Councilor Lopez and Councilor Heldmeyer)
An Ordinance Amending Chapters 21, 22 and 25 SFCC 1987
and Creating a New Section 15-1 SFCC 1987 Regarding Utility
Billing; Making Such Other Amendments as Necessary and
Making Miscellaneous Corrections.**

Utility Billing Division director Dave Schmiedicke reviewed a list of nine proposed changes, which are summarized as follows:

1. Creating a new chapter for common utility billing regulations.
2. Standardizing a provision for landlords to assign liability to their tenants for all utility services.
3. Standardizing and reducing many due dates in billing and collections.
4. Clarifying language for disconnection of water services so that these regulations are easier to follow and easier to enforce.
5. Simplifying provisions regarding placement of liens against properties for failure to pay bills.
6. Creating a new procedure for settling billing disputes.
7. Removing various procedures that staff believes are more appropriate as administrative procedures rather than being specified in the ordinance.
8. Making various cleanup changes to clarify code.
9. Updating references regarding compliance with the Inclusionary Zoning Program for properties receiving city utility services.

There was no one wishing to speak from the floor for or against this ordinance.

Councilor Lopez moved for approval. Councilor Bushee seconded the motion, which passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeiffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: None.

Case #H-02-124 – APPEAL. 724 Canyon Road (Historically Significant Borrego House). Cliff Skoglund is Appealing the Historic Design Review Board’s October 15, 2003, Decision to Deny the Applicant’s Request to Enclose the Exterior Courtyard on the Primary East Elevation and Portal on the Primary North Elevation as per Sections 14-5.2(D)2c, 14-5-2(D)2e(l) and 14-5.2(D)4 of the Code.

City Historic Preservation Planner James Hewat reported as follows: “This case represents an appeal of a decision that was rendered last October by the Historic Design Review Board regarding work that had already occurred at the Borrego House, now housing Geronimo’s Restaurant. Those sections of the code that you quote, Mayor, are quite simply the enclosure of the – no additions are actually allowed to be built on Significant buildings, on the primary façades of Significant Buildings. The Borrego House is considered to be a Significant building, is individually listed in the National Register of Historic Places, and in fact was one of the first buildings in New Mexico to be listed in the National Register.

“The second reason for the denial was that porches or portals in Significant buildings may not be enclosed, and the north-facing portal was, in fact, enclosed, although on a temporary basis; and the courtyard, which was a pergola, is also enclosed.

“The third reason for the denial was that additions must be six inches lower than a Significant building, and the addition on the primary façade is actually the same height as the Borrego House.”

Attorney for the appellant, Frank Herdman, was duly sworn.

Mr. Herdman stated that, over the history of this case, “some have tried to create the impression that Geronimo has little regard for the City’s zoning regulations. I would like to disabuse the Council of that impression and assure you that nothing could be further from the truth. There’s another side to the history of what’s gone over the past three years, as described in the staff’s memo for this case, and the staff memo that was presented to the HDRB that is also in the packet of materials.

“Over the past three years, the restaurant has been subjected to no less than six separate inspections. Surprise inspections were performed by approximately a dozen or so inspectors who have descended upon the property on at least two occasions, without notice, like a small attacking army. Some of them were armed with video cameras. On one occasion, this small army of inspectors appeared during the lunch hour while the restaurant was in operation. On at least two occasions, the owner wasn’t told that the inspectors were coming; but for some

reason, a photographer from the local newspaper arrived on the scene before the inspectors did. Obviously, that was not just coincidence.

“Many of the alleged violations that have been cited in the red-tags that have been posted on the restaurant were without basis. For example, the City cited the restaurant for having certain interior doors that have been in place since the 1980’s when the business was owned by Julian Garcia. Red-tags were issued on more than one occasion for items that had already been corrected in response to prior notices.

“Now, I grant you that there were a small number of violations that needed to be corrected, but I suspect that you would find the same thing for any business in the city if you turned it upside down in the way that Geronimo has been turned upside down. With regard to each and every one of those legitimate violations that were cited, Geronimo has taken the action to correct the problems and seek the necessary City approvals. And in fact just recently, we went before the Board of Adjustment and received approvals that we sought from that particular body.

“The only remaining issues to be resolved as a result of this three-year history are the three items that are before you this evening, and those are as follows.

“First, item one, the restaurant wants to install, on a temporary basis, a clear Plexiglas splashguard that is approximately 30 inches high, on the front railing of the front portal of the restaurant. This splashguard is necessary because when it rains, you have a lot of water running down Canyon Road, cars drive by, and it splashes water and mud on the patrons who are seated on the front portal. The splashguard is fully removable and is not permanently attached to the railing, and is used on a temporary basis.

“The second item: the restaurant wants to be able to use clear plastic roll-down sheeting on the front portal also — and I emphasize on a temporary and intermittent basis, to protect patrons from inclement weather who are seated on the front portal. The restaurant, by the way, has received approval for outdoor seating...back in 1980.

“The third item: the restaurant wants to install temporary windows that are completely removable on the east patio area. Again, the reason for the temporary windows is to provide protection from inclement weather for patrons who are seated in the east patio area, where seating is also approved and authorized.

“All of these items are either removed or rolled up during periods that they are not needed for protection from bad weather. They do not result in any permanent alteration to the building, and most importantly, they do not in any way impair or diminish the historical status or features of the structure.”

Mr. Herdman referred to a packet of Supplemental Materials Submitted in Support of Appeal. *[Submitted herewith as Exhibit "C" to these minutes.]*

Mr. Herdman reviewed the eight sections in the packet, which contained the following, as noted on the cover page:

- Tab 1: Photographs showing (a) east patio area of 724 Canyon Road with temporary windows removed and (b) transparent Plexiglas splashguard on front portal railing.
- Tab 2: Photographs from the 1960s showing the Borrego house with awnings on the front portal and solid white splashguard installed along the railing of the front portal. The photo reveals that awnings and splashguards on the front portal are a historical feature of the building.
- Tab 3: List of Santa Fe restaurants using blinds, Plexiglas, plastic sheeting, permanent enclosures or other weather protection at properties designated as either Contributing or Significant. The restaurants include El Farol and the Apple Hat Bistro, which are located on Canyon Road and next door to Geronimo.
- Tab 4: Photograph of El Farol, 808 Canyon Road, a historically Contributing property, with roll-down plastic sheeting and glass doors installed on portal.
- Tab 5: Photograph of Andiamo, 322 Garfield Street, a historically Contributing property, with permanent Plexiglas windows and awning installed on front portal.
- Tab 6: Photograph of Bistro 315, 315 Old Santa Fe Trail, a historically contributing property, showing blind installed on front portal. During winter months, plastic sheeting is installed around the portal over the main entrance of the restaurant.
- Tab 7: Photographs of Ristra, 548 Agua Fria Street, a historically significant property, showing tent installed at main entrance and roll down blinds.
- Tab 8: Photographs of Apple Hat Bistro, 808 Canyon Road, a historically contributing property, showing rear portal that has been recently enclosed and use of temporary umbrellas on front patio area.

Mr. Herdman continued, "I again emphasize that we are not proposing any permanent enclosure of the front portal or the east patio area, and so we ask that the three types of very simple weather protection routinely found throughout the city be approved. That's part one.

“Part two, we’re asking that the Council reverse certain action that the HDRB took that was beyond its authority.

“In its decision, the HDRB said that Geronimo needed to make certain permanent alterations to the restaurant building, including the removal of a portion of the roof and the removal of a split door leading to the east patio area. Neither item was a part of the application submitted to the HDRB for its review in October. Moreover, the applicant and the City, through the respective attorneys, had reached an agreement that the restaurant would not be going to the HDRB on the roof that was installed in 1998, nearly five years ago, with the City’s full knowledge. It’s our position that the City issued a permit for the entire roof, and it cannot now, five years later, say you have to remove it.

“As for the split door, the restaurant has never even been cited for that.

“We submit that if the City wants to pursue those claims, then the proper thing for it to do is to file an enforcement lawsuit, take the restaurant to court. In such a proceeding we are fully prepared to show evidence that we have vested rights and that the statute of limitations for those issues has expired. We’re prepared to have that dispute resolved in the property forum, the courts. We submit that it is not for either the HDRB or the City Council to resolve those particular issues.

“To conclude, and to be specific about what we are asking the City Council to do this evening: we want it to grant approval for those three items that I described — the temporary Plexiglas splashguard, the temporary roll-down plastic sheeting on the front portal, and the temporary windows on the east patio; and that we also request the City Council to reverse that part of HDRB’s decision in which it required alteration of the building, including removal of a portion of the roof and removal of the split door leading to the east patio.”

This concluded Mr. Herdman’s presentation.

The floor was opened to speakers against the granting of this appeal.

Dena Aquilina, residing at 327 Sanchez, and president of the Historic Neighborhood Association, was sworn. She stated, “The H-Board is a very intelligent and hardworking board.... and I support this decision, as does our neighborhood association.

“It’s almost silly to me to put a national landmark with Plexiglas, and it doesn’t seem to do much for the aesthetics. I’m sure that tourists don’t come here to see historic buildings wrapped in Plexiglas.”

Ms. Aquilina asked the Council to uphold the H-Board decision. She said the Board “is incredibly careful. They spend a lot of time, they really care, and I think to overturn a decision of theirs is very hard for the neighborhood, because we count on them to protect us, and they generally do.”

Randall Bell, 314 Garcia Street, was sworn. He said he was present as a designated representative of the H-Board, of which he is a member. He said the H-Board, at last night’s meeting, “expressed a great deal of concern about this particular appeal and wanted to have some voice here expressing our view on the importance of this particular property.”

Noting Mr. Herdman’s comments “that there was some agreement with some portion of the City or some elements of the City that the H-Board was not going to be in any way considering what staff has considered to be an illegal roofing of the pergola area,” Mr. Bell said he was not aware of any such agreement, but would note that staff’s appeal packet includes correspondence from City Manager Jim Romero “very clearly stating that this is one of the elements that the appellant is required to bring before the H-Board, and in fact the appellants brought this before the H-Board basically under threat of immediate lawsuit. In Mr. Romero’s September 4, 2002, letter, he states on page three, ‘The changes and additions of 306 Camino del Monte Sol and 724 Canyon Road, which staff informs me are impermissible, includes, (a) the enclosure, including roofing of the pergola at Geronimo’s, which has had the effect of creating a new room.’

“The bottom line is that Jim Romero required that they present that issue of the roofing and the pergola before the Council.

“In terms of the enclosures, our job, a difficult job, is just to enforce the ordinance. The ordinance does not allow any additions or changes to a primary façade of a Significant building, and you can say the Plexiglas panels that are screwed into the portal are not permanent, but they’re put in there in a rather permanent fashion. And I would also just say that, material-wise, historic structures are supposed to have historic integrity. Nineteenth century buildings do not have Plexiglas components.”

Sara Melton was duly sworn. She said, “For many years, it has been my privilege to attend the meetings of the Historic Design Review Board on behalf of the Old Santa Fe Association. In this case, the Old Santa Fe Association was a former owner of the Borrego house. The current owners are aware of the deed restrictions on the property that mandates approval of the Old Santa Fe Association for substantive alterations.

“In the matter of the permanent enclosure on the east, neither this current use nor any other justifies such major change to the form and fabric of the building. The importance of maintaining the historic integrity of the building is paramount. Neither

the Board's clear intent to keep that patio area open, nor the conditions of the permit, has been met.

"It has been suggested by a long list of other restaurants that Geronimo is being treated differently, and it wasn't that way in the 1960s. In the 1960s the same rules were not in place. As the ordinance and practice has developed over the years, this property has since been placed on the National Register. It was on the Register when it was bought for this particular purpose, and the record of events speaks for itself.

"Please uphold the H-Board decision. OSFA supports the staff recommendation and the policy of good code enforcement behind it."

This concluded comments against the appeal.

Ann Shannon, 424 Sosaya Lane, was sworn. She commented that, while she was grateful for the H-Board, "in this case I really feel like they're picking on Geronimo, particularly when you see the examples of these other restaurants. I have seen the Plexiglas and you can't see it from the street. It doesn't show, it doesn't glare. Secondly, the plastic sheeting is for rain. It never rains here, so it's rarely down. I just really think they're nitpicking over this."

Rob Ettenson, 38 Old Santa Fe Way, was sworn. He stated that he owns Inside Santa Fe Magazine and deals with over 200 local businesses. He said Geronimo "is an exemplary business for this community. The quality of their service, their food, and their ambiance is unparalleled not just in Santa Fe but anywhere throughout the country...."

Mr. Ettenson also reminded the Council that the items being requested by Geronimo are to protect the visitors who visit Santa Fe. He also stressed that the word "enclosure" was not an enclosure: "These portals are wide open." He warned the Council that not granting these requests would result in "dozens of visitors having a bad experience at Geronimo the first time it rains."

Bob Cornstein, owner of a gallery at 653 Canyon Road, was sworn. He said he walks past Geronimo twice daily. He stated that many people who visit his gallery say they are in Santa Fe because of Geronimo. He commented that the Council does not realize how much of an asset Geronimo is to the community.

Michael Freed, employed at Turner Carroll Galleries at 725 Canyon Road, was sworn. He stated that he has great respect for the H-Board, having gone through a remodel of his house in the Historic District. He said, "I can certainly vouch for the integrity that Geronimo maintained in keeping that historical look." Mr. Freed also stated that he understood the importance of every square foot of space on Canyon Road, which is measured in dollars and cents. He commented, "I think the H-Board

has its place, and I think that Geronimo maintained that integrity, and surely there can be a compromise.”

Bill Armstrong, 1149 E. Alameda, was sworn. He said he is new to the neighborhood and walks his dog and runs past Geronimo everyday, and has never noticed the Plexiglas. He stated that he spends a lot of time in Texas and people tell him they love visiting Santa Fe and also enjoy Geronimo as “the place to go eat.”

Michael Mehaffy, 131 Pedragal Place, was sworn. He said he previously lived at 924 Canyon Road in the historic Gerald Cassidy Compound and his old studio, which he renovated in 1982. He said he has known the Borrego House through many of its permutations, from Alphonso’s to its current owners; and while he thought the H-Board to be a “fabulous organization,” he also thought it “very shortsighted in this instance.” He said the City Council and H-Board “should congratulate Geronimo for the sensitivity they have used in this very historic and beautiful old building as opposed to condemning them for it.”

Eric Di Stephano, executive chef at Geronimo and Swig, residing at 2596 Calle Delfino, was sworn. He stated that Geronimo “provides one of the finest dining experiences for locals and guests in Santa Fe, and Cliff and Chris have set up a business that employs over 70 people who earn higher than the usual wages of most restaurants in the community.” Mr. Di Stephano said most of his staff have families with young children and work in a safe atmosphere thanks to some of the upgrades made to the restaurant. He said owner Cliff Skoglund has helped out employees who have fallen ill and provided them with insurance and money long past the required time.

Mr. Di Stephano said he thought Geronimo’s was being singled out for making small improvements to beautify the property and protect the patrons from the weather and from rocks flying at them from passing cars. He said he thought it uncommon to see “six to eight people in my kitchen with video cameras, taking pictures and disturbing the operations...”

Lourdes Lopez, 1024 Calle Margarita, was sworn. She said she grew up on Delgado Street and went to Geronimo this summer with some relatives, and “to tell you the truth, the Plexiglas that they’re speaking of, I didn’t even know it was there.” She stated that she and her relatives were also pleased to see that Geronimo “has changed for the better.”

Ms. Lopez said she was also present on behalf of her daughter, Ronnie Ortiz, who is on Geronimo’s staff and loves it and is very happy there.

John Ester was sworn and stated that he has worked with Mr. Skoglund for 12 years “and it’s my opinion that he’s a wonderful steward of the building. He’s tasty, minimalist and caring, and I’m proud of Geronimo.”

José Rodriguez was sworn. He stated that he has been working for Geronimo for almost nine years and did not understand why this appeal was necessary, because Geronimo has been a very good employer. He said he began as a dishwasher when he came to Santa Fe, and is now a supervisor. He stated that the people in the kitchen all “feel like a big family... and we love Cliff. He knows how to treat people and whatever we need, he always has open hands to help us.”

A person who did not identify himself was sworn. Speaking in Spanish, he said he has worked for Geronimo for three years and did not understand why the Plexiglas, etc. was a problem when he thought it more important for people to visit Santa Fe. He said the actions of the Council would have an effect on the many employees at Geronimo.

Ronnie Ortiz, 332 Camino Cerrito, was sworn. Ms. Ortiz said she works for Geronimo and is happy to be there. She commented, “The level of service is amazing. We have people who fly in just to come.” She said she deals with concierges daily and could not begin to tell the Council the number of people who visit the restaurant, nor the number of locals who visit, nor the number of repeat customers who visit from all over the world.

Mary Ann Ortiz, chef concierge from Inn of the Anasazi, was sworn. She stated that Geronimo “is one of the finest dining establishments this town has ever seen. They take care of the tourism in this town as well as the local community.” She reminded the Council that tourism is Santa Fe’s main industry.

Mary Brewer, 825 Calle Mejia, was sworn. Ms. Brewer stated that she was concierge at La Fonda Hotel. She stated that Geronimo is one of Santa Fe’s most important tourist attractions, and is nationally and internationally recognized, “and we need to support it in any way that we can. And our economy needs all the help it can get right now.” She pointed out that Geronimo “has tried to work with the City through its building permit process, and the Historic Design Review Board is also very important to our community, but we need to work together to preserve not only our buildings but our businesses. We’ve lost a lot of businesses in Santa Fe.”

Ms. Brewer added, “We also need to be consistent with our rules and regulations and enforcement. And it does appear from the evidence that was presented that Geronimo is being unfairly singled out, and it just doesn’t make sense.”

Steve Wimmer, head concierge at La Fonda, was sworn. Mr. Wimmer told the story of St. Gentician, patron of hospitality, who was martyred: “He held up his hands over the door because Christians had taken refuge in his inn and said to the Roman soldiers, ‘you cannot come in here.’ I think any host has the right to protect their guests from Roman soldiers or small stones or rainstorms. It’s just a simple matter of good hospitality.”

Mr. Wimmer also stated that there are “barbarians at the gate...a small match, a little mouse, a flea, that any moment could tear apart the economy of this city. And I think instead of being involved with hysterical persecution instead of historical preservation, we need to look at some of these things that could have a greater effect on this town and its future.”

This concluded the public hearing portion of the meeting.

In reviewing the three items being requested by the appellants, Councilor Lopez asked if overturning the H-Board decision, and consequently permitting the temporary windows on the east patio area, would effectively allow that outdoor room to continue. Mr. Hewat responded that this was correct. He said there are about six tables in there.

City Attorney Bruce Thompson interjected and stated that he had a slightly different interpretation: “I think what the appeal asks for is that the issue of actually enclosing the room and adding the roof is not appropriate to be heard; and if the Council overturns what was done, it would be making no determination about the appropriateness of enclosing that room, but simply saying it is not something that was appropriate to be heard by the H-Board because it wasn’t properly brought there, and that issue would still exist as to whether or not that enclosure was proper, and what the proper forum for deciding that was. It would not be a determination that that was proper.”

Mr. Thompson said the Council had the option to consider tonight whether or not the enclosure action was appropriate, but could also determine that it was not appropriate to decide that tonight and that it should be decided in a different forum.

Mr. Thompson added, “But I think legally the argument was made that to decide that issue would be a denial of due process. That’s what the appeal says. The argument was that, since they hadn’t raised it, it’s a denial of due process; I don’t believe that’s correct because there’s been notice and opportunity to be heard. That hearing was tonight. But if you decide you should not hear it, that would also be appropriate.”

Councilor Lopez asked Mr. Thompson to craft a motion that would approve the Plexiglas, the roll down shades and the temporary windows “and be done with this matter.”

Mr. Thompson said a motion to approve the appeal, then, “would be to approve the items that you have mentioned and to reverse the H-Board with respect to those issues.... I believe that that would also include the determination that it was inappropriate to have considered the other issue that was raised as issue number two, but not actually decide whether those

actions were proper, but to decide that that issue should not be brought before the Council.”

Councilor Lopez so moved. Councilor Wurzbarger seconded the motion.

Councilor Bushee said she found it surprising that there was no little in her packet that would help her determine what existed at the Borrego House with regard to the east portal area. She stated that she thought the Council should address that issue tonight, “or this is going to land in court.”

Mr. Hewat referred to a photo in the packet taken in April 1993, reflecting an open courtyard.

Councilor Bushee said she could not tell that from the photo, which was poorly reproduced in the packet.

Councilor Lopez questioned why this issue was being raised, and Mr. Thompson responded that it was up to the Council to address it tonight, but added, “whichever way the Council goes on that issue, I’m not sure that it would necessarily forestall litigation in the future. I’m not sure that the Council could cut that off given the procedural matter in which this has come here.”

With respect to Councilor Bushee’s request, Mr. Hewat also referred to a photo in the packet taken of the Borrego House in 1940, reflecting the courtyard in question as an open area, “sort of a C-shaped area.”

Councilor Bushee said she would limit her remarks to the three items in the motion.

Councilor Bushee commented that, if the “great big buildup” tonight was about the Plexiglas in the front of the railings, and the roll-downs, “that is all over Santa Fe. There are some hideous variations of that throughout the H District.”

Councilor Heldmeyer asked Mr. Hewat if, “when a building comes up before the H-Board and has outstanding red tags, are those red tags considered part of what the H-Board considers?” Mr. Hewat responded that they are typically considered.

Councilor Heldmeyer commented, “That’s how the roof and the door got discussed — because they were outstanding red tags.”

Councilor Heldmeyer pointed out that the items the Council was not considering tonight in this appeal were what a wonderful restaurant Geronimo was, or Mr. Skoglund’s contributions to charity, or other red tags that have been issued and resolved. She noted that some of the red tags, despite Mr. Herdman’s reference to them in “soft and glowing terms, were for very serious violations of, in particular, fire

safety. And some of them may have been picky. I haven't seen the whole list, but I do know that a few of them that we heard about in executive session were very serious issues."

Councilor Heldmeyer agreed with Councilor Bushee that there were some "hideous examples" on other restaurants in the Historic District, and added "we should be enforcing every one of them."

Councilor Heldmeyer stated that she loves the service and food at Geronimo, but when dining there has also said, "why do they have these ugly non-historic plastic things on their front portal? It has always struck me as rather odd because everything else is done with such taste."

Councilor Heldmeyer pointed out that the tourist business "is as fragile as our architecture, and one of the reasons we have historic preservation is because it's the right thing to do. But one of the reasons we have historic preservation is because being a historically preserved city contributes to our tourist base, and if every restaurant in town starts hanging up plastic sheeting and Plexiglas on their front portal and it looks like God knows where, this doesn't help the tourist base. Tourists come for a real and authentic historic community."

Councilor Wurzbarger said she thought the H-Board was "wrong in its decision," and added that she was surprised to hear that there was not a distinction in the code between temporary and permanent.

Councilor Wurzbarger stated that the verbatim transcript of the H-Board meeting from which its decision was being appealed was "totally unacceptable. There were more 'inaudibles' on those minutes, so we don't really know what was said by the respective members who were deliberating the issue." [Note: Mr. Hewat explained later in the proceedings that the meeting was held at the County Commission Chambers, where the amplification system was not working.]

Councilor Wurzbarger said she has visited Geronimo at five or six different times of the day "and I don't believe that you can see the Plexiglas; and I don't believe that, when the shades are rolled up, that that is a deterrent, certainly not to the long-term historical significance of building when you compare it to what was there in the most recent past, in the 60's and certainly before. This is an issue of interpretation."

Councilor Wurzbarger also noted that the issue of the roof has been going on for five years at this point. She added, "I think there is a lot of 'stuff' going on here.... with respect to this particular business, and I'm most uncomfortable with it."

Councilor Wurzbarger asked if the Significant historical status of the Borrego House would be compromised if the Council were to allow the Plexiglas, roll-downs and temporary windows, and Mr. Hewat responded that the H-Board discussed at

length whether the integrity of the building would be diminished in any way by these three elements. He said the code prohibits changes to the primary façade of a Contributing or Significant building whether they be temporary or permanent, “and I don’t think there’s a great deal of interpretation there. That’s my personal opinion.”

Councilor Chavez stated that the Palace of the Governors has Plexiglas installed to protect some of their windows. He commented, “Plexiglas could have its place in historic buildings.” He asked if the roll-down covers and the temporary windows on the east elevation are also Plexiglas, and Mr. Hewat responded that “I believe they are proper true divided light windows that are removable” and were not Plexiglas.

Councilor Chavez said he did not feel that these additions would harm the building or damage the building once they were removed. He stated that, were the building to revert to a single-family residential house, then perhaps the Plexiglas and temporary roll down covers would be unnecessary and probably inappropriate. He said, “Obviously, this building has changed in time. The uses have changed.”

Councilor Chavez pointed out that these items did not pose a major threat to the public health and safety, and so he did not have a problem with them.

Councilor Pfeffer asked if there are any outstanding red tags at Geronimo’s at the current time, and Mr. Herdman came forward and said there were none.

Councilor Pfeffer said it seemed to him that, in order to properly maintain and preserve historic buildings, outside of endowments from museums, “they need to be lived in, and they need to be occupied and used, and it seems to me the way in which the owner of this building has treated this is extraordinarily modest in terms of changes to its use.... and therefore maintaining the building.... for posterity.”

Councilor Pfeffer stated that voting against the motion and upholding the HRDB would result in the elimination of about one-third of the dining room space in the building. He remarked, “Part of me says that it’s absolutely correct that the historic building must be maintained, but another part of me says that there has to be a little bit of give in order for that to actually happen. And absent that give, I think we’re cutting off our nose to spite our face.”

In reviewing the 1940 photograph of the Borrego House, Councilor Pfeffer commented, “It seems to me that more than 50 years ago this home must have had some shading devices and some kind of splash protection, albeit not Plexiglas, but I don’t believe.... that it was possible for folks to have lived in these historic homes without accouterments, without swings on the portals, without screens for the summer... because the sun was no less sharp in the afternoon fifty years ago.”

Councilor Ortiz asked Mr. Herdman when the Plexiglas was installed, and Mr. Herdman responded that it has gone up and down for the last eight years, since it is temporary rather than permanent.

Councilor Ortiz asked when it was last removed, and Mr. Herdman responded that it is always removed during the winter months, so it was last removed in approximately October 2002, and then put in during the spring.

Councilor Ortiz asked when the roll-down was installed, and Mr. Herdman responded that it was about eight years ago. He said it stays rolled up.

Councilor Ortiz asked if Geronimo got a permit to install the roll-down, and Mr. Herdman responded, "I'm told that the applicant was advised by the City that that was not necessary."

Councilor Ortiz asked who told the applicant that, and Mr. Herdman replied, "Apparently the individual who installed it."

Councilor Ortiz asked Mr. Herdman, "You're not saying that City staff gave permission to your client or your client's agent to install those awnings?" and Mr. Herdman responded that he was not saying that.

Addressing the enclosure on the east side, Councilor Ortiz said he understood it was the appellant's position that that was not properly in front of him because "allegedly there was an agreement reached with the City Manager concerning that particular issue."

Mr. Herdman responded that there was a "multitude of grounds. One is that there was an agreement and reliance thereon that that issue was not going to be brought up by the HDRB and that the applicant was not going to be bringing it before the HDRB, that the City reserved the right to pursue an enforcement lawsuit with regard to that particular issue, that we believe that that is the proper forum to do so, and that in that forum, that is the proper forum for resolving the issue in light of the defenses that we would raise, which would include, without limitation, the defense of statute of limitations. We're prepared to put on testimony that the City knew full well regarding the installation of that roof more than five years ago; and additionally, we're prepared to put on testimony that the City issued a permit for that roof."

Councilor Ortiz said he understood that Mr. Skoglund himself would testify that he saw the permit and that the permit included the installation of a new roof over the pergola, and Mr. Herdman responded that that would be part of the evidence presented.

Mr. Herdman stated that it was the appellant's position that "when you go to HDRB, they have the authority to grant or deny approval with respect to the

application that you have raised before HDRB, and I submit respectfully that that is exactly what the City Code says.”

Councilor Ortiz asked Mr. Herdman if he was contesting the authority that the H-Board has that, when a red tag on an alleged violation of the Historic Ordinance is pending, the H-Board has no authority to consider the red tag in place but to only consider the application that the applicant wishes to present.

Mr. Herdman cited Chapter 14-11, which expressly provides that, in the event that the City issues a notice, a citation or red tag, the City’s remedy is to then pursue a legal proceeding.

Councilor Ortiz asked Mr. Herdman if it was his position that that was the exclusive remedy available to the City, and Mr. Herdman responded that it was. He stated that, were the HDRB to say (for example) that the applicant should remove the roof, windows and door, it has no authority to enforce that. He said the City’s only recourse is through the courts.

Councilor Ortiz asked Mr. Herdman if the permit for the roofing of the pergola came through the H-Board, and Mr. Herdman responded that the permit was a building permit, “and it’s our contention that the building permit and the reliance thereon, the completion of the roof, in accordance with the permit, the expiration of almost five years thereafter, gives rise unequivocally and unconditionally to vested rights, and that it would constitute an unconstitutional taking now to say that that must be undone, and that the courts are the proper forum to resolve that issue.”

Councilor Bushee said she observed that the yellow posting on Geronimo referred to “an enclosure of the front portal.”

Mr. Hewat responded that this was correct. He said technically it is an enclosure.

Councilor Bushee asked Mr. Hewat if he was saying, then, that the Plexiglas and roll-downs would be considered an enclosure, and Mr. Hewat responded that this was correct; and likewise the east elevation.

Councilor Bushee commented, “I have great concerns that the City has put itself in a situation of selective enforcement in this situation, and I hope we don’t get in that situation ever again.”

The motion passed on the following Roll Call vote:

For: Councilor Lopez; Councilor Pfeffer; Councilor Wurzburger; Councilor Bushee; Councilor Chavez; Councilor Coss.

Against: Councilor Ortiz; Councilor Heldmeyer.

In voting, Councilor Ortiz said, "For five years, because of relationships between the applicant and certain members of this Governing Body and former Governing Bodies, because of representations made between City staff and agents for this particular restaurant, there has been selective non-enforcement for five years on various violations, and I think it is an absurdity to think that, after five years in which the applicant has wanted to not have enforcement, to then say that there is some kind of vested rights, I totally disagree."

In voting, Councilor Coss said he wished it had been enforced. He said, "Some time back, I was walking down Canyon Road and saw that, wow, it had been changed. That's one of the times in Santa Fe when I've really been conscious that a piece of my history just got changed, and I find out tonight...that maybe it was preventable, and it happened through non-enforcement. But it was five years ago, and it seems like we're down to talking about should they have a Plexiglas front or not. And I just can't get too excited about that."

Councilor Heldmeyer moved that staff pursue the issue of the addition on the east side, including, if appropriate, the door, and use whatever means are appropriate to do so.

Councilor Ortiz seconded the motion.

Councilor Ortiz said he was disappointed that, even though the City sent a letter saying it would file an action back in district court last October, no action has been taken. He said he would direct staff to "actually file an action so we can determine whether or not the legal theories expounded by Mr. Herdman have any relevance or not."

Councilor Bushee said, "My recollection coming out of executive session was that if the applicant did not go before the various boards that we directed them to go before, and pursue whatever appeals and remedies that we asked them to pursue, we would then find ourselves in court. I just want to clarify that for the record."

Councilor Bushee added, "I still think we're going to end up in court over selective enforcement issues."

Councilor Lopez urged Councilors to vote against the motion, since she thought it inappropriate. She commented, "I think we've spent enough time on this matter, and I don't think they're going to dare make another change to this facility forever."

Councilor Pfeffer said he agreed with Councilor Lopez. He stated that the building did change, as stated by Councilor Coss, but that was years ago, "and even if there was undue influence on the part of the owner of the building on decision-makers and enforcement officers, as Councilor Ortiz is very heavily implying, there is

certainly culpability on our side of the fence. I think it would be a waste of money and time and the effort of the City Attorney's Office when we've got so many other issues to be dealing with." He stated that this was a "blatant lost cause."

The motion failed to pass on the following Roll Call vote:

For: Councilor Ortiz; Councilor Heldmeyer.

Against: Councilor Pfeffer; Councilor Wurzbarger; Councilor Bushee; Councilor Chavez; Councilor Coss; Councilor Lopez.

[The Afternoon Session was continued.]

COMMUNICATIONS FROM THE GOVERNING BODY

Councilor Pfeffer

Councilor Pfeffer said he read a letter of Fred Flatt's in the newspaper concerning left turns and raising the issue of whether or not it was acceptable, let alone legal, to have motorists enter an intersection when it is obvious they will not be able to complete the left turn before the light changes, and hence they are blocking traffic. He asked Mr. Romero to pursue this, perhaps through camera work at intersections.

Councilor Pfeffer congratulated Parks & Recreation for the July 4 Pancake Breakfast, since they did an excellent job setting up with other volunteers. He observed that the stage assembly was uniquely set up and was fabulously successful. He said this raises a concern that the new bandstand will not have that flexibility and perhaps the design needs to be revisited.

Councilor Pfeffer said he would like to work with the City Manager and Parks & Rec to have a permanent Parks crew dedicated to the downtown area to start addressing security, monitoring, cleanup, and other daily needs. He said he was concerned that the new monument in Cathedral Park could potentially be vandalized, because it is very attractive and vulnerable. He said he would like a more permanent presence in the downtown.

Councilor Pfeffer said he was not clear what the Council voted for when it voted to restore a pattern of traffic to the Plaza, i.e., did that include speed humps. He said he is receiving comment from a lot of Plaza users who are questioning the need for them, since special events with lots of people could cause a safety problem, with people tripping on them.

Councilor Chavez

Councilor Chavez announced that there would be a district meeting on July 15 from 6:30 to 8:30 at Cesar Chavez Elementary School regarding the Air Life Ambulance Service and other activity generated by the airport.

Councilor Chavez introduced a resolution adopting an infrastructure capital improvements plan, which staff has been working on. He said the state agencies would need the information by July 31. He asked that the resolution go through the committee process. [Mr. Romero said it would be on the next Public Works Committee agenda.]

Councilor Bushee

Councilor Bushee said there is a concern in her district about the bark beetle on private property. She suggested that the City consider educating people on what to do, or else requiring them to do it, because it is a fire hazard and is spreading like wildfire. She asked Mr. Thompson to look into what the City can require or provide through a comprehensive program.

Councilor Bushee asked for staff to look at the recently laminated Fort Marcy racquetball courts. She said they were sanded afterwards, producing a poor result. She said the City should not have to pay for that, if possible. She stated that Al Quintana, a user of the court, would like to hear from the City.

Councilor Bushee mentioned the “brick that cannot be located in Cathedral Park.”

Councilor Bushee said she has heard a lot of problems regarding water billing issues. She said people seemed to have had huge increases from April to May, e.g., \$1,000 and \$1,500.

Councilor Bushee said the Plaza looks “downtrodden and disgusting.” She commented that it is dirty -- the bricks are dirty, the street is dirty, the crosswalk lines are gone, the grass is dead, and when she was there on July 4, someone was lighting fireworks off the monument.

Councilor Bushee stated that she is still interested in sprucing up the front of City Hall, “whatever we can look at.”

Councilor Bushee asked when the retrofit ordinance would be reviewed. She commented that now Councilor Ortiz’ resolution is coming forward, but she would like doing the whole package together.

Councilor Bushee said she would like to follow up on discussions that came up around the landfill over the budget process. She stated to Mr. Romero, “I know you had some studying going on there for a while, but whether it’s you need to hire that director sooner than later, or Julie Berman needs to get back in there after the whole MRC, or something — but I would like to understand why services fall behind, what’s happening out at the transfer station. It doesn’t have to be tomorrow, but I just feel like if we let go of keeping a watchful eye on that one, we’re going to be back to where we were before.”

Mr. Romero responded that the City is not ignoring Solid Waste at all. He said he would respond to Councilor Bushee’s concerns in writing regarding what occurred three weeks to a month ago. He added that the positions of Solid Waste Director and Operations Manager have been posted, and the City made an offer to someone for Solid Waste, who was not interested.

Councilor Bushee asked whatever happened to the Downtown Master Plan, and Mr. Romero said he would respond in writing tomorrow.

Councilor Ortiz

Councilor Ortiz said he had two “picayune issues” and three other issues.

Councilor Ortiz said he observed salt cedar when he was at the MRC this evening, and recommended that they be chopped down. [Councilor Bushee said they have to be removed by the roots.]

Councilor Ortiz observed that Ragle Park does not have retrofitted toilets for some reason.

Councilor Ortiz distributed the following two resolutions and ordinance: 1) resolution opposing the plutonium pit facility in Northern New Mexico; 2) ordinance quadrupling the administrative penalty for commercial noncompliance with retrofit requirements, and allowing a 60-day window for them to get onto the City’s retrofit list; and 3) resolution supporting opportunities for affordable housing by establishing an RFP process for City-owned property in the Northwest Quadrant.

Councilor Lopez

Councilor Lopez stated that the City has increased parking fines from \$5 to \$15, but wondered what the City is going to do to get more parking. She commented that the City has done a good job of raising fees, but not a very good job of providing parking: “We continue to fight about that. Every time we move forward with a project, somebody pulls it under.” She asked Mr. Romero for a status report.

Councilor Lopez said she wanted to be sure that the Summer Recreation Program includes daily reading for participants. Mr. Romero responded that this has been included.

Councilor Lopez noted that Park Plaza is all on one meter; and recently at the PUC meeting, members suggested that the Water Company hire a specialist to draw up a plan for the City on how to get people onto meters, because none of the City's conservation programs work without individual meters. Mr. Romero responded that someone has been hired to study those issues (such as Park Plaza, mobile home courts, etc.), and came on board early this week. He said he looked forward to a recommendation from that individual in 90 days.

Councilor Lopez asked staff to set up a meeting at Park Plaza and invite all of the tenants, since this is a very large population base and there are a lot of senior citizens there who have been calling and wondering what to do about their water bills, because they do conserve. Councilor Ortiz suggested calling the manager at Park Plaza and getting onto their annual meeting agenda. He predicted a big turnout if the meeting is advertised.

Councilor Lopez said she talked to a contractor today who did his ten retrofits as required for his addition. She stated, "He had to go and get notarized statements from everybody who owned a house where he put the toilet in; then he had to get notarized statements from everybody that put the toilet in, so he did all of his paperwork, took it in. And now we have City staff that's going out to every one of those houses where a toilet was put in to verify that that toilet was put in." She questioned why builders should waste time getting things notarized if the City staff is going out to check on the toilets anyway. She suggested that this be revisited.

Councilor Lopez said, "I'd like to know what the status is of the crosswalk, that we passed a resolution about crosswalks over at Cerrillos Road."

Councilor Heldmeyer

Councilor Heldmeyer invited Governing Body members to the Public Works Committee meeting on Monday, where the Committee will get its first look at the public works plan being introduced. She suggested that it be reviewed prior to the meeting in case Councilors want to add projects to the list.

Councilor Heldmeyer, noting remarks by David McQuarie under Petitions From the Floor, said the CIP bond issue will, for the first time, include a set amount for ADA compliance. She said the intent is to let the Mayor's Committee on the Concerns of Persons With Disabilities to develop a priority list.

Councilor Heldmeyer said that, in order to accept money from the Department of Transportation, the Council needs to pass a resolution and an agreement that says

the City is willing to accept money for Old Pecos Trail, which has been sitting unused for almost a decade.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 9:45 p.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter

